

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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2652.01-02, 2654.00-00,
2642.00-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-128597-10

Date:

December 27, 2010

Re:

Legend:

Decedent =
Spouse =
Trust =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Accountant =

Dear :

This letter responds to a letter from your authorized representative dated July 1, 2010, requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make a “reverse” QTIP election under § 2652(a)(3) of the Internal Revenue Code and to sever Marital Trust into GST Exempt Marital Trust and GST Non-exempt Marital Trust pursuant to § 26.2654-1(b)(1) of the Generation-Skipping Transfer Tax Regulations, and a ruling that the automatic allocation rules under § 2632(e)(1) apply to Family Trust and GST Exempt Marital Trust.

The facts and representations submitted are summarized as follows: On Date 1, Decedent and Decedent’s spouse, Spouse, created a revocable trust, Trust. Trust was completely restated on Date 2. Decedent died testate on Date 3, survived by Spouse. Article Eight, Section 1 of Trust provides that, upon Decedent’s death, the trustee shall divide the trust into three separate trusts, Survivor’s Trust, Marital Trust, and Family Trust. Article Nine provides, in part, that Marital Trust benefits Spouse during his lifetime and, upon his death, Decedent’s children and their descendants, *per stirpes*.

Article Ten provides, in part, that Family Trust benefits Spouse during his lifetime and, upon his death, Decedent's children and their descendants.

Article Sixteen, Section 11 provides that in order to minimize the impact of any generation-skipping tax that may be applied to any of the trusts created by this agreement or their beneficiaries, the Trustee, in its sole and absolute discretion, is authorized to divide any trust that would be partially exempt from GST tax into GST exempt and GST non-exempt trusts. The exempt trust and nonexempt trust shall consist of a fractional interest of the total trust assets.

On Date 4, Accountant prepared and filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Family Trust was reported on Part 4 of the return. Accountant reported Marital Trust as QTIP property on Schedule M of the Form 706 and, therefore, the executor of Decedent's estate is deemed to have made the QTIP election to have the Marital Trust treated as qualified terminable interest property under § 2056(b)(7). Accountant failed to identify GST Exempt Marital Trust and GST Non-exempt Marital Trust as separate trusts and did not make a "reverse" QTIP election under § 2652 with respect to the GST Exempt Marital Trust. Accountant also failed to attach Schedule R to the Form 706 and, as a result, Decedent's GST exemption was not affirmatively allocated to either Family Trust or Marital Trust.

The failure to make a reverse QTIP election with respect to GST Exempt Marital Trust and to allocate Decedent's GST exemption to Family Trust and GST Exempt Marital Trust was discovered several months later when an attorney hired to administer the trusts was funding the Family Trust, GST Exempt Marital Trust, and GST Non-exempt Marital Trust. Following this discovery, Marital Trust was divided into a GST Exempt Marital Trust and a GST Non-exempt Marital Trust. On Date 5, Accountant filed a supplemental Form 706 and attached a Schedule R on which he made a reverse QTIP election for GST Exempt Marital Trust and allocated Decedent's GST exemption to Family Trust and GST Exempt Marital Trust.

Law and Analysis

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the

surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of subchapter B) made by a “transferor” to a skip person. Under § 2611(a), the term “generation-skipping transfer” means a taxable distribution, a taxable termination, and a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the term “applicable rate” with respect to any generation-skipping transfer, as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), as in effect for the year at issue, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2632(a) once made, is irrevocable. Section 2631(c) provides that for purposes of § 2632(a), the GST exemption amount for any calendar year is equal to the applicable exclusion amount under § 2010(c) for each calendar year.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows: (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(e)(2) provides, in part, that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent's executor on or before that date. Unused GST exemption is allocated pro rata, on the basis of the value of the property as finally determined for purposes of chapter 11, first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata on the basis of the chapter 11 value of the nonexempt portion of the trust property to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made.

Section 2652(a)(1) provides, in part, that for purposes of chapter 13, the term “transferor” means in the case of any property subject to the tax imposed by chapter 11, the decedent. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in part, that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056 by reason of subsection (b)(7), the estate of the decedent may elect to treat all of the property in such trust for GST tax purposes as if the election to be treated as qualified terminable interest property had not been made (reverse QTIP election).

Section 26.2652-2(a) provides, in part, that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1) provides, in part, that the severance of a trust that is included in the transferor’s gross estate (or created under the transferor’s will) into two or more trusts is recognized for purposes of chapter 13 if the trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor and the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original instrument and the severance occurs prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor and either the new trusts are severed on a fractional basis.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Decedent’s estate is granted an extension of time to Date 5 to sever Marital Trust into GST Exempt Marital Trust and GST Nonexempt Marital Trust and to make a “reverse” QTIP election with respect to

GST Exempt Marital Trust. Further, we rule that the automatic allocation rules of § 2632(e)(1) apply to automatically allocate Decedent's unused GST exemption to Family Trust and GST Exempt Marital Trust. We note that, based upon the relief granted, the allocation of Decedent's GST exemption made on the supplemental Form 706 is void under § 26.2632-1(b)(4)(i).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we are not ruling whether Marital Trust qualifies as a QTIP for purposes of § 2056(b)(7).

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Lorraine E. Gardner, Senior Counsel
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for § 6110 purposes
Copy of this letter

cc: